IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6385 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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BIPINBHAI RAMESHBHAI JAISWAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR PREMAL JOSHI A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu was detained under the provisions contained in the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the PASA] by an order dated 10.6.1999, vide Annexure 'A' and was ordered to be detained in the jail at Junagadh, vide Annexure A/2 on page 12.

2. From the grounds of detention supplied to the detenu, it appears that the District Magistrate, Baroda was satisfied that the detenu was indulging in activities of transporting and storing of prohibited liquor. The said act of the petitioner is punishable under the provisions contained in the Bombay Prohibition Act.

3. For the purpose of deciding this matter, it is not necessary to go into the grounds of the detention because the representation forwarded by the petitioner has not been considered. Ground 'J' of the memo of

petition reads as under :-

"The petitioner respectfully states that the advocate of the petitioner has made a presentation dated 8.7.99 addressed to the detaining authority and the same was received by the office of the detaining authority. Annexed hereto and marked as Annexure 'C' is a copy of the representation dated 8.7.99.

It is submitted that the detaining authority has to satisfy this Hon'ble Court as to when the said representation was received and how it was dealt with. It is submitted that the respondent No. 2 had power to consider the representation received by it within a period of 12 days from the date of detention or the approval is given to the detention order whichever is earlier. Consideration of representation after the said period is nullity in eye of law and therefore, the detention order becomes bad in law. It is submitted that the detaining authority has failed to consider the said representation in accordance with law and therefore, the continued detention of the petitioner becomes bad in law."

4. In this matter, neither the detaining authority nor the State has filed any reply to the detenu's aforesaid contention. A Division Bench of this Court in the case of DHANIBEN M TANDEL vs. UNION OF INDIA reported in 1997 (1) GLH 545 had an occasion to consider non-filing of returns in the matter of detention. The Division Bench has deprecated the method of showing files before the Court.

5. In the instant case, as the contentions raised by the petitioner have not been denied by the detaining authority or by the State, the continued detention of the detenu is required to be held as bad and illegal. Therefore, the detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ----------